Supreme Court, U.S.
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No. 96-773

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

PETER HELLAND,
Plaintiff-Petitioner

v.

SOUTH BEND COMMUNITY SCHOOL CORPORATION,
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DISTRICT COURT OPINION

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

PETER HELLAND,)
)
Plaintiff)
)
vs.)
No. 3:94-CV-852RM)
)
SOUTH BEND COMMUNITY SCHOOL)
CORPORATION,)
)
Defendant)

MEMORANDUM AND ORDER

When Peter Helland was dismissed from his position as a substitute teacher for the South Bend Community School Corporation, the School Corporation stated it was due to his failures to follow lesson plans, his conduct demonstrating poor judgment, and his injection of religion into classrooms. Believing that his religious beliefs were the true reason for his dismissal, Mr. Helland brings this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, 42

U.S.C. § 1983, and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb. Because Mr. Helland has not responded to the School Corporation's summary judgment motion with evidence sufficient to allow a fact finder to conclude that he was dismissed due to his religion or that the School Corporation substantially burdened Mr. Helland's exercise of his religion without a compelling government interest the court grants the School Corporation's summary judgment motion.

> A party seeking summary judgment must demonstrate that no genuine Issue of fact exists for trial and that the movement is entitled to judgment as a matter of law. If that showing is made and the motion's opponent would bear the burden at trial on the matter that forms the basis of the motion, the opponent must come forth with evidence to show what facts are in actual dispute. A genuine factual issue exists only when there is sufficient evidence for a jury to return a verdict for the motion's opponent. Summary judgment should be granted if no reasonable jury could return a verdict for the motion's opponent.
>
> The parties cannot rest on mere allegations in the pleadings, or upon conclusory allegations in affidavits. The court must construe the facts as favorably to the non-moving party as the record will permit, and draw any permissible inferences from the

> materials before it in favor of the non-moving party, as long as the inferences are reasonable. The non-moving party must show that the disputed fact is material, or outcome-determinative, under applicable law.

Conery v. Bath Associates, 803 F. Supp. 1388, 1392-1393 (N.D. Ind. 1992) (citations omitted).

The parties do not dispute that Mr. Helland is a Christian with deeply held religious beliefs. The School Corporation does not appear to dispute Mr. Helland's assertion that carrying a copy of the Bible whenever possible is part of his belief. The parties dispute the role Mr. Helland's beliefs played in his discharge.

Two months after Mr. Helland filed this action in his own behalf, counsel appeared for him. His attorneys filed the amended complaint presently before the court. Accordingly, the court does not employ the standards of Haines v. Kerner, 404 U.S. 519 (1972), in determining the issues before the court. The complaint specifies the claims brought on Mr. Helland's behalf; neither in Mr. Helland's complaint nor in

his summary judgment memoranda does Mr. Helland raise a claim that the School Corporation violated his rights under the Fourteenth Amendment's Due Process Clause. Accordingly, although much of Mr. Helland's argument is addressed to the absence of an opportunity for him to refute allegations made against him, the court addresses the case as one alleging religious discrimination and burdening the exercise of religion, and not one alleging a violation of the right to notice and an opportunity to be heard before being dismissed.

Although Mr. Helland was represented by counsel at the time his amended complaint was filed, counsel had withdrawn by the time he responded to the summary judgment motion. After the school corporation had filed its reply brief, Mr. Helland asked for an opportunity to respond to what he perceived as a new issue raised in that brief. Although the issue might not have been truly new to the case, the court allowed Mr. Helland that opportunity because he

may not have recognized the issue when he filed his initial response. In the order granting the request, the court limited its permission to the filing of matters directed to the new issue. The School Corporation believes Mr. Helland exceeded the scope of that permission, and moves to strike it. The court agrees that much of Mr. Helland's sur-reply exceeded the scope of the "new" issue, but because the School Corporation does not appear to have been prejudiced by the untimeliness of Mr. Helland's submission, the court declines to strike it.

Mr. Helland presents no direct evidence that his religion--as distinct from his religious conduct--was a reason for his dismissal, and so must rely on the indirect method of proof established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and *Texas Department of Community Affairs vs. Burdine*, 450 U.S. 248 (1981). The School Corporation does not challenge Mr. Helland's ability to establish a *prima facie* case under that analysis; instead, it

argues that Mr. Helland has insufficient evidence to establish that its stated legitimate nondiscriminatory reason is pretextual. The School Corporation points to its information that Mr. Helland distributed religious sexually oriented material to a middle school class (in 1979), that he was arrested outside a high school for passing out religious materials to students (1983), that several teachers (Edison Middle, 1985; Adams High, 1989 and 1992; Nuner Elementary, 1992; Tarkington Elementary, 1992) and principals (Clay Middle, 1987; Adams High, 1987 and twice in 1992; Tarkington Elementary, 1992) had asked that Mr. Helland not substitute again in their class or school, that Mr. Helland read the Bible to students during class (Washington High, 1986; Clay Middle, 1987; Adams High, 1992), that Mr. Helland had mismanaged students or failed to follow lesson plans while substituting (Washington High, 1986; Adams High, 1987, twice in 1989, and twice in 1992; Nuner Elementary, 1992), and that Mr. Helland drank a non-

alcoholic beer in front of elementary students (Nuner Elementary, 1992). The School Corporation points to a 1993 letter warning Mr. Helland of his poor performance; its records indicate that after that warning letter, Mr. Helland passed out religious newspapers at Adams High School in 1993 and ignored a lesson plan, discussed creationism and read from the Bible during a Tarkington Elementary School class In 1993. The School Corporation removed Mr. Helland's name from the substitute teacher list on November 10, 1993.

Mr. Helland submitted scores of documents, as well as his own affidavits, in an effort to establish that some of the reports on which the School Corporation claims to have relied are procedurally defective, that others are simply wrong or are misinterpretations of events (alleging conduct at one school on a day on which he worked at another school; reporting that he distributed newspapers, when it was a friend who distributed the newspapers, though the papers contained

an article Mr. Helland had written), and that he was a good teacher who discussed religious matters only infrequently and then at the behest of students. He also argues that given the number of classes he taught over the years as a substitute, the number of complaints against him is far smaller than it could have been. None of Mr. Helland's materials, however, support an inference that the School Corporation did not believe the reports it had received.

Although, at the summary judgment stage, an employment discrimination plaintiff need only produce enough evidence to allow a reasonable fact finder to infer that the employer's proffered reasons were pretextual, *Sirvidas v. Commonwealth Edison Co.*, 60 F.3d 375, 378 (7th Cir. 1995), simply disputing the extent or significance of the conduct upon which an employment decision was based does not satisfy that burden. *Sample v. Aldi Inc.*, 61 F.3d 544, 548-551 (7th Cir. 1995). Because a Title VII claim requires intentional discrimination, the pretext inquiry focuses on the

honesty, not the accuracy, of the employer's reason. *Russell v. Acme-Evans Co.*, 51 F.3d 64, 68-69 (7th Cir. 1995). A pretext is a lie--a phony reason for an action. *Perdomo v. Browner*, 67 F.3d 140, 144-145 (7th Cir, 1995). Accordingly, while a plaintiff may satisfy his pretext burden by showing, that the proffered reasons had no basis in fact, *Collier v. Budd Co.*, 66 F.3d 886, 892 (7th Cir. 1995), the burden is not met simply by offering alternative explanations for the proffered reasons' factual bases. Such evidence merely invites second-guessing.

Although Mr. Helland disputes the accuracy of the reports on which the School Corporation acted, the reports provide ample reason, without regard to Mr. Helland's religion, to conclude that Mr. Helland was not performing as a substitute public school teacher should. His religious activities in the schools and discussions with students may well have played a role in the decision to dismiss him, but nothing in the record indicates that Mr. Helland's religion

requires him to discuss his religious beliefs with students (his brief indicates a secular belief that such discussions are necessary to perform the role of an Indiana schoolteacher). Mr. Helland has not offered evidence from which a reasonable fact finder could conclude that the School Corporation's proffered reasons for dismissing him were lies. Therefore, the School Corporation is entitled to judgment as a matter of law on Mr. Helland's claims under Title VII and § 1983.

The School Corporation argues that the Religious Freedom Restoration Act is unconstitutional because it represents a legislative effort to undo the Supreme Court's interpretation of the First Amendment in *Employment Division v. Smith*, 494 U.S. 872 (1990). The court need not decide the Act's constitutionality because Mr. Helland has not offered sufficient evidence from which a reasonable trier of fact could find that the School Corporation substantially burdened Mr. Helland's exercise of his religion without a

compelling interest. As noted in the preceding paragraph, the School Corporation did not dismiss Mr. Helland because of his beliefs as distinct from his conduct as a teacher, and Mr. Helland does not contend that his religious beliefs require him to discuss his religion with the students he is hired to teach. The record's only reference to the requirements of his belief is found in his affidavit, where he states he must carry a copy of the Bible whenever possible. Mr. Helland does not aver that this qualified obligation requires him to carry the Bible to classrooms where his employer is forbidden to endorse religion.

The Religious Freedom Restoration Act provides that a government may substantially burden a person's exercise of religion if doing so is the restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000bb(3)(b). If the School Corporation is assumed to have burdened Mr. Helland's religious exercise substantially, it had a compelling reason for doing so: as mentioned in the preceding paragraph,

a public school system cannot endorse Christianity or any other religion, whether directly or through its agents. *See generally Rosenberger v. Rector & Visitors of University of Virginia*, 115 S. Ct. 2510 (1995); Capitol Square Review and Advisory Bd. v. Pinette, 115 S. Ct. 2440 (1995); *Board of Education of Kiryas Joel Village Sch. Dist. v. Grumet*, 114 S. Ct. 2481 (1994); *Lamb's Chapel v. Center Moriches Union Free School Dist*, 113 S. Ct. 2141 (1993). Accordingly, a public school system has a compelling interest in assuring that its teachers do not use publicly-funded classrooms and school property during school hours to espouse a religion. The School Corporation also has a compelling interest in assuring that substitute teachers follow established lesson plans and curricula. Mr. Helland's history of using, classrooms and school property to discuss his religious beliefs, and varying from lesson plans in doing so, intermittently since 1979, provides ample evidence that Mr.

Helland's dismissal was the least restrictive means of furthering that compelling interest.

The School Corporation is entitled to summary judgment on Mr. Helland's claim under the Religious Freedom Restoration Act.

Perhaps Mr. Helland is correct that the teachings of religions (or at least the moral lessons taught by religions) should have a place in South Bend's schools, or perhaps not. Further comment on those arguments is inappropriate because it is not this court's role to decide such matters in light of the current state of the law, and such matters need not be decided to resolve the claims Mr. Helland has presented to the court. The evidence in the record would not allow a reasonable trier of fact to conclude that Mr. Helland's religion was a motivating factor in his dismissal, or that the School Corporation substantially burdened his exercise of his religion without using the least restrictive means to further a compelling government interest.

Accordingly, the defendant's motion for summary judgment (filed May 26, 1995 (#20)) must be, and hereby is, GRANTED. The defendant's motion (filed October 13, 1995 (#52)) to strike certain of the plaintiff's summary judgment submissions is DENIED. The clerk is directed to enter judgment in favor of the defendant and against the plaintiff.

SO ORDERED.

ENTERED: December 7, 1995

/s/

Robert L. Miller, Jr.,
Judge

United States District Court